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# PESHAWAR HIGH COURT, PESHAWAR

AQ/Adm

28/8

2<sup>ND</sup> CONFERENCE OF THE DISTRICT AND SESSIONS JUDGES



CONFERENCE REPORT

JULY 14 to 16, 2017

NATHIAGALI

Pi.

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## **1. PART-I**

### **1.1 ACKNOWLEDGEMENT**

My sincere appreciation for the current leadership, who has the attitude and knack for reforms. His Lordship continually and convincingly conveyed a spirit of innovation with regard to administration of justice and an excitement for professionalization. Without his absolute support and persistent guidance, conduct of this event would not have been possible.

I would also like to thank all the respected participants, particularly Hon'ble Judges of the Peshawar High Court, for contributing meaningfully in discussions to achieve the goal of improvement in service delivery. I can say it with full confidence that their input on various initiatives was brilliant.

My gratitude to each member of the team including support staff, who not only looked after logistics but also pursued the entire consultative process. I am obliged to mention with particularity Mr. Masood Khan, Dr. Khurshid Iqbal and Syed A. Bukhari for their untiring efforts in providing conceptual and thematic clarity.

In addition, my special thanks to Khyber Pakhtunkhwa Governance Support Project and the Multi Donor Trust Fund for supporting the activity.

MUHAMMAD SALIM KHAN  
PAS  
REGISTRAR, PESHAWAR HIGH COURT

## 1.2 EXECUTIVE SUMMARY

Good governance is recognized as imperative to enhancing economic development, particularly in the developing world. It is acknowledged that bad governance not only destroys the institutions supporting the structure of governance, but breeds poverty as well. It leads to social exclusion of the poor and creates hurdles in their equal access to the productive assets of the state. One glaring reason for the rise in the incidence of poverty in recent years, despite the overall economic prosperity, is the deteriorating condition of public service delivery by the key governance institutions, such as police and the judiciary. The capability perspective of poverty require that a development policy need to focus on enhancement of basic capabilities of the poor as health, education, access to justice and so on.

It is perhaps in this context that there emerged a growing consensus in the global partnership for development over addressing poverty reduction as an issue of governance and the rule of law. Since courts have the mandate to check arbitrary use of power by the government functionaries and to provide protection to weaker ones, rule of law is, therefore, considered to be *sine qua non* for ensuring good governance. It follows that building an equitable justice system is the linchpin of economic development. An efficient judiciary, it is argued, has the potential to bring about predictability and ensure accountability and transparency.

Being main facet of the hierarchy, District Judiciary is believed to have immediate interaction with majority of the litigant population. Its performance is, therefore, expected to have direct bearing on public perception. With separation of judiciary and executive in the recent years, its responsibilities enhanced manifold. Its role turned out to be more crucial in the post 9/11 scenario, particularly in Khyber Pakhtunkhwa, being main battlefield of the proxy war. It was in this backdrop that Hon'ble the Chief Justice and the Administration Committee of the Peshawar High Court, for the first time, envisaged a vision for institutionalization of Judiciary in concrete terms in light of constitutional mandate and cultural norms. Though district judiciary has already been working within this perspective but in a conventional manner, leaving room for deviations.

As a first step, Hon'ble the Chief Justice mandated a team of Judicial Officers to work on certain reforms for improvement in the service delivery of the District Judiciary. For ensuring such improvements, specific areas were identified for consideration. Those areas are: first, establishment of a Secretariat for District Judiciary; second, re-designing the PER policy/form; and, third, proposing relevant amendments in the law. In order to ensure ownership by the stakeholders, a comprehensive consultative process was launched. Initially, an informal preliminary Focus Group Discussion was arranged in the KP Judicial Academy on 21 and 23 February 2017. The recommendations so made were disseminated to the districts for deliberation and feedback. Later on, informal meetings were held with members of the District Judiciary in various regions. In the meanwhile, a comprehensive questionnaire was also circulated to all members of the District Judiciary for feedback on every proposed reform intervention, so as to ensure that no one is left uncounted.

As a culminating point of the consultative process, this conference was held with a sole agenda to achieve consensus on reform interventions and to document workable recommendations for placement before Hon'ble the Administration Committee of the Peshawar High Court.

### 1.3 INAUGURAL SESSION

The conference started with recitation from the Holy Quran. The Registrar welcomed the participants and briefly explained the format of the event and its objective and importance. "It would be a structural change for better. We will be going to zoom the sub areas in a more articulate manner. In the current system, Judicial Officer is more vulnerable and we want the system to be foolproof. We want to tell other departments that we are turning around and we expect it from you as well. We have to touch the level of excellence" he remarked.

In his inaugural note, his Lordship the Chief Justice shared his ideas in an informal manner. He welcomed and thanked the participants for responding to his vision positively. "I had three options. Firstly; to maintain *status quo*, secondly; to replicate some imported idea with certain amendments and thirdly; to let the District Judiciary do it for itself. I decided to go for the third option. So we want something from District Judiciary to be implemented. You are here as representatives of District Judiciary. We will not do anything without consensus of the District Judiciary. Please make sure that each issue is highlighted. Recommendations having majority support would be placed before the Administration Committee for consideration". These were the opening remarks, which is a comprehensive policy statement from the Chief Justice.

#### 1.4 SCHEDULE OF EVENTS

ACTIVITY	TIME	CONVENER
<b>INAUGURAL SESSION</b>		
Recitation from the Holy Quran	09.00—09.05 am	
Welcome Note	09.05—09.10 am	Registrar
Inaugural Address	09.10—09.20 am	The Chief Justice
<b>FIRST SESSION</b>		
Presentation on proposed Secretariat of District Judiciary	09.20—10.20 am	Dr Khurshid Iqbal & Syed Anees Badshah Bukhari
Q&A and Working Tea	10.20—11.30 am	Moderator. M.Masood Panel. Hayat A Shah Dr. K.Iqbal Syed A.Bukhari
Plenary Discussion	11.30—12.30 am	Participants' Proposals
Prayer & Lunch Break	12.30—02.00 pm	
<b>SECOND SESSION</b>		
Presentation on Rules, PER and Recruitment	02.00—03.00 pm	Mr. Masood Khan
Q&A and Working Tea	03.00-04.00 pm	Moderator: M.Masood Panel. Hayat A Shah Dr. K.Iqbal Syed A.Bukhari
Plenary Discussion	04.00—04.30 pm	Participants' Proposals
Concluding Remarks	04.30—05.00 pm	The Chief Justice

**Rapporteurs:**      **Muhammad Asif-II, District and Sessions Judge, Battagram**  
                                 **Fakhar Zaman, District and Sessions Judge, Bannu**

## 1.5 THE PARTICIPANTS

S#	Name with designation
1	Hon'ble Mr. Justice Waqar Ahmad Seth
2	Hon'ble Mr. Justice Muhammad Ibrahim Khan
3	Hon'ble Mr. Justice Muhammad Ayub Khan
4	Mr. Muhammad Salim Khan, Registrar
5	Mr. Sharif Ahmad, Member Inspection Team
6	Mr. Zakauallah Khattak, Addl. Registrar (Admn)
7	Dr. Khurshid Iqbal, Legal Draftsman
8	Syed Anees Badshah Bukhari, Director NJPIC
9	Mr. Muhammad Masood Khan, DG, KP Judicial Academy
10	Mr. Muhammad Asif Khan, Senior Director, KP Judicial Academy
11	Mr. Subhan Sher, District & Sessions Judge, Mardan
12	Mr. Muhammad Adil Khan, District & Sessions Judge, Swabi
13	Mr. Muhammad Younis, District & Sessions Judge, Malakand
14	Mr. Muhammad Rauf Khan, District & Sessions Judge, Swat
15	Mr. Muhammad Zeb Khan, District & Sessions Judge, Shangla
16	Mr. Muhammad Zafar, District & Sessions Judge, Dir Upper
17	Mr. Ikhtiar Khan, District & Sessions Judge, Buner
18	Mrs. Sofia Waqar Khattak, District & Sessions Judge, Chitral
19	Mr. Aurangzeb Khattak, District & Sessions Judge, Tank
20	Mr. Fakhar Zaman, District & Sessions Judge, Bannu
21	Mrs. Zarqash Sani, District & Sessions Judge, Lakki Marwat
22	Mr. Ahmad Sultan Tareen, District & Sessions Judge, Kohat
23	Syed Asghar Ali Shah, District & Sessions Judge, Hangu
24	Mr. Nasrullah Khan Gandapur, District & Sessions Judge, Karak
25	Mr. Salahuddin, District & Sessions Judge, Haripur
26	Mr. Muhammad Zubair Khan, District & Sessions Judge, Abbottabad
27	Mr. Muzammil Shah Khattak, District & Sessions Judge, Mansehra
28	Mr. Muhammad Asif-II, District & Sessions Judge, Battagram
29	Mr. Aamer Nazir Bhatti, District & Sessions Judge, Kohistan at Dassu
30	Mr. Ashfaque Taj, District & Sessions Judge, Tor Ghar
31	Mr. Gohar Rehman, District & Sessions Judge, Dir Lower
32	Mr. Zafar Iqbal Khan, Judge, Anti-Terrorism Court, Swat
33	Mr. Tariq Yousafzai, Judge, Anti-Terrorism Court, Peshawar
34	Mr. Muhammad Aamer Nazir, Judge, Consumer Court, D.I. Khan
35	Mr. Niaz Muhammad Khan, Chairman, KP Service Tribunal
36	Mr. Shakeel Azam Awan, Additional Sessions Judge, Swabi
37	Mr. Safiullah Jan, Additional Sessions Judge, Lakki Marwat
38	Ms. Rashida Bano, Additional Sessions Judge, Charsadda Marwat
39	Mr. Ishfaq Ali Haider, Additional Sessions Judge, Dera Ismail Khan
40	Mr. Irshad Ahmad, Additional Sessions Judge, Dera Ismail Khan
41	Mr. Malik Muhammad Hasnain, Senior Civil Judge, Hangu
42	Mr. Ahmad Ihsanullah Qureshi, Senior Civil Judge, D.I. Khan
43	Mr. Abid Zaman, Senior Civil Judge, Chitral
44	Syed Israr Ali Shah, Civil Judge, Allai (Battagram)
45	Mr. Ghulam Hamid, Civil Judge, Alpur (Shangla)
46	Mr. Monibur Rahman, Civil Judge, Mardan



F/A

## 2. PART-II

### 2.1 SECRETARIAT OF DISTRICT JUDICIARY

The rapid socio-cultural and politico-economic transformation that has been witnessed in recent years in Pakistan in general and Khyber Pakhtunkhwa in particular has complicated the nature of litigation to a greater extent. One outcome is considerable increase in number of cases, which led to multi-faceted expansion in District Judiciary. Needless to mention that District Judiciary is the cutting edge of justice system working at the grassroots level under the superintendence and control of the High Court pursuant to constitutional mandate. It, therefore, requires a well-defined hierarchical arrangement for better service delivery and institutional development.

The national and international experiences, in the changed scenario, require that the policy of devolution may be adopted. Most of the responsibilities may be devolved on the District Judiciary in an independent and accountable manner. This requires establishment of a Secretariat for the District Judiciary. The objectives as outlined in the proposed design include; firstly; improved analytical approach towards ascertainment of future needs and requirements in areas of human resource, finances, information and communication technology; secondly; process reorganizing better resource allocation for realization of the future needs, thirdly; improved good governance at each step through transparency, accountability, fairness and merit, fourthly; improved liaison with other justice sector key players for efficiency and effectiveness and lastly; improved service delivery to the citizens through effective grievance redressal mechanism.

The proposed structure of administration, as envisioned, will address the problems in the context of; expansion and diversity, variation in nature of working in the High Court and the District Judiciary, decentralization-led simplification, bringing homogeneity between the Ministerial Staff of High Court and the District Judiciary and incompatibilities between the High Court and the District Judiciary.

## 2.2 PLENARY DISCUSSION

Syed A. Bukhari gave detailed presentation on the architecture and design of the proposed Secretariat with a zoom on its functional view. The following proposed wings were discussed in detail.

S#	Wing	Head
I.	Ethics and Integrity Management Wing	Judicial Officer – Ethics and Integrity (E & I)
II.	Operations Management Wing (Planning and Development Wing (PDD), Administration and Finance Department (AFD), Communication,	Judicial Officer.- Operations Management Wing (OMO)
III.	Service Delivery Monitoring and Evaluation Wing (MED)	Judicial Officer – Service Delivery Monitoring and Evaluation Officer (SDMEO)
IV.	HR and Welfare Wing (HRWD)	Judicial Officer - HR and Welfare Officer (HRWO)

*Can be integrated*

In plenary discussion, the idea of creation of the secretariat with the proposed structure was unanimously appreciated by the participants. The feedback received from members of the District Judiciary was also discussed in detail, which is as under;

S#	Query	Yes %	No %
1	Is Secretariat of District Judiciary (SDJ) required?	95	05
2	The Head of SDJ may be called Secretary?	84	16
3	If required, should SDJ be staffed by the Judicial Officers (JOs)?	92	08
4	Should there be criteria for selection of JOs for appointment to Secretariat?	87	13
5	Should the SDJ posting be tenure-based?	91	09
7	Should there be a separate SDJ cadre amongst JOs?	12	88
8	Would it be appropriate to select permanent separate JOs through competitive process from amongst Civil Judge/Senior Civil Judges for SDJ with upward progression to BS-21/22?	16	84
9	Should the staff of SDJ (though progressively) be recruited through Public Service Commission?	49	51
10	Do you agree with the proposed wing-wise structure of the SDJ?	92	08
11	Should there be separate wing/section each for CJs, SCJs, AD&SJs and D&SJs?	75	25
12	Should SDJ be empowered to collect information directly from Districts for Monitoring & Evaluation? (Explanation: power-sharing/relationship between District & SDJ)	64	36
13	Should SDJ assess judgment of JOs (in terms of expression only)?	31	69
14	Alternatively to the above (Q12), should there be a graded annual judgment writing training?	53	47

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15	Should the Head of the SDJ be declared as ex-officio member of the Administration Committee?	81	19
16	Do you agree with the objectives of SDJ mentioned in the draft function review note	81	19
17	Should the proposed HR & Welfare wing also carve out some post-retirement benefit and activities plan?	95	05
18	Should there be a Judicial Officers' Fund for the families of deceased JOs (Shoaib Khan Custom Juge)	98	02
32	Should the financial affairs of the JOs be centrally maintained at SDJ (proposal: Sawabi)	70	30
33	Is the nomenclature "District Judiciary" appropriate	96	04
36	Should SDJ prepare an annual report for fitness of field posting(s) of JOs?	50	50

There were, however, some comments and suggestions from the participants, which have been incorporated in the conference recommendations.

### 3. PART-III

#### 3.1 PERFORMANCE EVALUATION

Performance Evaluation has been the most crucial and controversial aspect of the Judicial Service parameters. Members of the District Judiciary feel aggrieved of the reflections that are being cast on their career progression due to writing of the PER, the criteria for its poor quantification and the areas in which the Officers are assessed. A detailed consultative process was initiated. Initially, the matter was discussed by a preliminary Focus Group constituted for the purpose. An amended PER form was devised with a sole objective to make the performance evaluation quantified and to minimize abuse of the discretion by the Reporting and the Countersigning authorities. In this respect, a detailed presentation was made by Mr. Muhammad Masood Khan, Director General, Khyber Pakhtunkhwa Judicial Academy. The areas/ sub areas of assessment were discussed one by one. The efforts made so far were appreciated but it was suggested that the form needs further refinement as to distribution of marks into sub areas.

### 3.2 PLENARY DISCUSSION

In a plenary discussion, the feedback received from members of the District Judiciary was discussed in detail, which is as under;

S#	Query	Yes %	No %
12	Should SDJ be empowered to collect information directly from Districts for Monitoring & Evaluation? (Explanation: power-sharing/relationship between District & SDJ)	64	36
13	Should SDJ assess judgment of JOs (in terms of expression only)?	31	69
14	Alternatively to the above (Q12), should there be a graded annual judgment writing training?	53	47
19	Should there be one PER form for all categories of JOs?	75	25
20	Should 'integrity' be included in the PER for reporting officer?	71	29
21	Should each District chalk out its own disposal plan as a replacement of DPEP? (District Abbottabad has proposed one such policy)	83	17
22	Should DSJ write PER of ADJ?	35	65
24	Should there be retrenchment on performance basis? (MianAdghar Shah)	23	77
25	Should ADJ be given role to report about Judgment of SCJ and CJ, in context of PER (Chitral)	21	79
26	Should JOs be dismissed who earns three successive adverse PERs? (MianAsghar Shah)	15	85
34	Training Marks may be awarded by third party	50	50
40	Should JOs be compulsorily retired if left out from promotion for three consecutive times? (MianAsghar Shah)	21	79

Almost consensus was there on the proposed PER Form, but the participants further proposed that there should be some time frame for initiation of PER, communication of adverse entries in the PER and disposal of representations there against with consequence in case of default.

Similarly, there was a split opinion as to whether 'Integrity' should be included as an assessment area in the PER or not? The supporters of the view that integrity should not be part of the PER, argued that integrity is not a tribute, rather it should be an attribute of a Judicial Officer and that it cannot be quantified in any manner. It was further argued that an officer whose integrity is not above board should not be allowed to perform judicial functions in any capacity and that it would be extremely illogical to

only deny him progression in career on this score. It was proposed that integrity should be taken out of purview of Initiating Officer and be dealt separately by the 'Cell for Eradication of Corruption' under the relevant Conduct Rules and that there shall be zero tolerance on issues concerning integrity. Those who favoured 'Integrity' to remain part of the PER as an assessment area, argued that it is the most essential part of the performance evaluation and that it must remain as a tool with the Reporting Officer for controlling the affairs of the team.

The Chair observed that both these views would be placed before Hon'ble the Administration Committee in view of percentage of the feedback received from the districts. Similarly, the chair further observed that response to question No.22 of the questionnaire, which reflects a majority view that PER of the ADJs should not be written by the District Judges, is misconceived as it was not intended to be asked from Civil Judges, Senior Civil Judges, Additional Sessions Judges and even Sessions Judges working against ex-cadre positions, being irrelevant in the matter. The Chair asked the opinion of participants on this issue, who showed overwhelming majority in support of the fact that PER of the Additional Sessions Judges should be written by the District Judges.

There was yet another aspect which remained under intense debate. The marks allocated in the proposed PER form to the mandatory graded trainings by the Academy were held by the majority to be excessive and that the same be revisited and rationalized.

#### **4. PART-IV**

##### **4.1 REFORMING JUDICIAL RECRUITMENTS**

In any judicial reform initiative for efficient and effective service delivery, merit based competitive recruitment is considered to be the starting point. Besides, there was a growing dissatisfaction within the District Judiciary regarding lateral entry at the level of Additional District & Sessions Judges and of course the elevation to the Peshawar High

Court. Factually, the posts of Senior Civil Judges are very limited as compared to those of Civil Judges and Additional Sessions Judges. It has, therefore, proved to be a bottleneck and is considered by the Civil Judges and Senior Civil Judges to be a spoke in the wheel in their career progression. It is genuinely argued, that a lawyer with seven years standing at the Bar has the opportunity to compete for recruitment as Additional Sessions Judge while a member of service with almost ten years or more at the Bench have no such opening. It was in this background that need for revisiting the recruitment system and career planning was felt at the policy making level.

Earlier, judicial recruitment proposals were circulated among the District Judiciary for its feedback, which reflected that a large percentage of the District Judiciary opted that there should only be 'one point entry'. Similarly, the four points entry based on merit based recruitment on all four tiers of service through a competitive process was also discarded altogether.

#### 4.2 PLENARY DISCUSSION

An elaborate presentation was made by Mr. Masood Khan, Director General KP Judicial Academy in light of the consultative process. Similarly, the pros and cons of different recruitment proposals were also discussed in light of feedback from District Judiciary, which is as under;

S#	Query	Yes %	No %
27	Should the rules be amended to include retirement after 10 yrs. Service with full benefits? (Proposal: Nowshera)	91	09
29	Should a career path in terms of length of service be fixed? (time scale promotion)	92	08
30	Promotion should be performance-based amongst top three senior JOs (proposal: Nowshera)	33	67
35	Should there be merit quota policy for promotion, among the JOs, through PSC	22	78
37	Should existing recruitment system of AD&SJ remain in force but with selection through Public Service Commission?	55	45

	(MianAsghar Shah)		
38	Should AD&SJ quota may be re-casted as 75 and 25 % for promotion and direct recruitment, respectively? (MianAsghar Shah)	58	42
41	Should AD&SJs be selected through Commission/NTS competitive exam with opportunity to CJs/SCJs of 5 yrs experience to sit in exam? (Shoaib Khan, Custom Judge)	52	48
50	Should induction training be not less than 6 months?	91	09
51	Should there be more trainings of CJs during the first 5 years of service?	93	07
52	Should there be attachment with police station, revenue office, district administration and army during induction training?	86	14

There was an exhaustive debate regarding proposals for recruitment to the District Judiciary and career path in terms of length of service. The participants observed that percentage of answer to question No. 27 shows the level of frustration within the District Judiciary, which may not be overlooked. Keeping in view the feedback from the districts, the participants unanimously decided to take the four point entry off the table. Mr. Masood Khan, Director General KP Judicial Academy proposed that in case one point entry is not practicable then at least the standing at the Bar for recruitment as Additional Sessions Judge be revisited. It was explained that the existing standing at the Bar was required when the post of Additional Sessions Judge was in BPS-18. Such length of practice, it was explained, needs to be rationalized as the post of Additional Sessions Judge is now that of BPS-20. The proposal of recruitment of Additional Sessions Judges through Khyber Pakhtunkhwa Public Service Commission was also discussed.

The Chair observed that there must be some alternate proposal beside 'one point entry' for consideration by Hon'ble the Administration Committee. Mr. Fakhar Zaman, District & Sessions Judge, Bannu, proposed another option of recruitment, which was elaborated before the house with the permission of the Chair.

The Chair observed that this proposal would be circulated among the District Judiciary for feedback and response.

#### **4.3 ALTERNATE PROPOSAL FOR JUDICIAL RECRUITMENTS**

Based on two point entry, the alternate proposal for judicial recruitment is as under;

- Entry at TWO LEVELS
- LEVEL-I CIVIL JUDGE-BPS-18
  - 100% open competition
  - Zonal quota to be observed (CSS/PMS/PCS-J Pattern)
- Age limit 22 to 30 Years
- Entry through Competitive examination by KP Public Service Commission to be conducted periodically for available slots.
- Qualifications Law Degree/ No standing at the Bar required
- LEVEL-II ADDITIONAL SESSIONS JUDGE-BPS-20
- Total available slots shall be divided into three parts.
- 1/3rd of available slots shall be filled up by PROMOTION from amongst the holders of the posts of Senior Civil Judges on the basis of seniority cum fitness.
- 1/3rd of available slots shall be filled up by INITIAL RECRUITMENT from amongst the holders of the posts of Civil Judges/Senior Civil Judges.
- 1/3rd of available slots shall be filled up by INITIAL RECRUITMENT from amongst the Lawyers/Law Officers.
- Entry against quota (1/3rd + 1/3rd) reserved for INITIAL RECRUITMENT shall be through Competitive examination to be conducted by KP Public Service Commission periodically for available slots
- Age limit 32 to 45 Years (For 1/3rd Bar quota only)
- No age limit for members of the District Judiciary because they are already in service.
- Maximum of THREE chances for each candidate for one LEVEL and maximum of FOUR chances collectively for both levels (CSS/PMS/PCS-J Pattern)
- Qualifications 08 years of service as Civil Judge/Senior Civil Judge  
08 years of standing at the Bar



08 years of service in BPS-17 and above in any legal field  
(To be prescribed in detailed terms)

- The order of seniority among the three categories of officers would be as under;
  1. Officers PROMOTED against 1/3rd quota
  2. Officers RECRUITED against 1/3rd quota from District Judiciary
  3. Officers RECRUITED against 1/3rd quota from Bar
- The slots of Senior Civil Judges are to be filled in by promotion from amongst the holders of posts of Civil Judges on the basis of seniority cum fitness.
- The slots of District Judges are to be filled in by promotion from amongst the holders of posts of Additional District Judges on the basis of seniority cum fitness.
- Syllabus for examination for entry at LEVEL-I already exists.
- Syllabus for examination for entry at LEVEL-II to be prescribed by High Court.

#### **PROS OF PROPOSED OPTION**

- By non-prescribing standing at the Bar for LEVEL-I, we are losing nothing and gaining much more.
- Two years practice requirement is counter-productive.
- We lose best of the best because within the initial two years after completion of academics the brilliants are filtered as they opt for their career somewhere else and we are left with mediocre only. (the recent report by KP Public Service Commission about level of candidates refers)
- Two years of practice is too short a period for a candidate to have a visible change in his professional skills.
- By entry through competitive examination at LEVEL-II, we will get best of the best from the cadre, the Bar and any other legal service.
- The grievance of Civil Judges/Senior Civil Judges who have considerable length of service with no promotion prospects would be addressed.
- The Bar quota is not disturbed and inter se seniority issues would be addressed.
- All officers in every cadre would have an opportunity to excel and to prove themselves.

- o The minds would not get rusted as everyone from Bench, Bar and any other legal service would constantly strive for enhancement of his capacity.
- o It would open a new venue for Continuing Legal Education (CLE)

## 5. PART-V

### 5.1 TRANSFER AND POSTING POLICY

Since years, the transfer and posting within District Judiciary is being considered the sole reason for internal governance issues or a tool of punishment. Without having any policy in field, the transfer/posting of Judicial Officers remained unregulated on inequitable terms. Most of the times it was used as a punitive tool while at times it proved to be a source of patronage. Over a period of time, it resulted in demoralization of a silent majority of Judicial Officers. In order to ensure equity and to address internal governance issues, an attempt was made by the High Court to streamline the affairs connected with transfer, posting and tenure of Judicial Officers in form of a policy. In wake of the current reform agenda, need for revisiting the transfer/posting policy was also felt. Mr. Masood Khan, Director General KP Judicial Academy, while making presentation on amendment in service Rules explained the changes in the existing policy.

### 5.2 PLENARY DISCUSSION

Conceptually, the transfer and posting policy was appreciated and owned by the participants. Thorough deliberation was made on details of the proposed policy in light of feedback from District Judiciary, which is as under;

39	Should there be tenure posting? (MianAsghar Shah)	80	20
53	Do you agree with the existing transfer/posting policy?	40	60
54	Should a transfer/posting policy be devised on the basis of distance from JOs home town? (DI Khan)	82	18
55	Zonal-wise transfer should exempt female judges (proposal: Nowshera) Should a transfer policy (and others, e.g., training abroad) be gender-sensitive?	22	71
56	Should JOs be given category A, B and C posting one after the other? (Referred to the table below)	58	42
59	Should a posting in an Area be fashioned in such a manner	83	17

	that JOs are assigned the zone more convenient to him?		
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	Zone	Area	Districts	Tenure	
1	Centre	A	Peshawar, Charsadda, Mardan, Nowshera and Sawabi	02 Years	Provided requirement of No. of JOs is double in Area A as compared to B and C.
2	Hazara-I		Abbottabad, Haripur and Mansehra		
3	South-II	B	Bannu, Hangu, Karak and Kohat	01 Year	
4	Malakand-I		Batkhela, Swat, Dir Lower and Buner		
5	South-I	C	DI Khan, Tank, LakkiMarwat	01 Year	
6	Hazara-II		Battagram, Kohistan, Shangla and Tor Ghar		
7	Malakand-II		Chitral, Dir Upper		

The house unanimously recommended the above Zone groups and tenures reflected there for. It was suggested that mutually agreed transfers may be considered and that requests for transfers on medical or other compassionate grounds may be left to the discretion of the competent authority.

## 6. PART-VI

### 6.1 AMENDMENT IN SERVICE RULES

For any kind of reform to be effective and sustainable, its ownership and continuity is essential. To ensure ownership by the stakeholders, thorough consultation and deliberation was undertaken at each step of the process. Having understood and finalized the structural design, we are now to look for post-implementation snags and sustainability of the reform interventions. Corresponding amendments in the relevant rules are must for giving it adequate statutory support. Mr. Masood Khan, Director General KP Judicial Academy shared draft service Rules in his elaborate presentation. It was explained that establishment of Secretariat, new mechanism of performance evaluation, transfer/posting policy and the proposed amendment in the recruitment system have been incorporated in the proposed rules.

### 6.2 PLENARY DISCUSSION

There was a consensus that Rules should be amended so as to provide statutory backing to the reform initiatives. It was, however, debated as to whether Rules could be framed

under Constitutional provisions without resorting to section 26 of the Civil Servants Act, 1973? The house suggested that the proposed Rules should be drafted carefully and in case separate enactment is required, process may be initiated for that as well.

## 7. PART-VII

### 7.1 CONFERENCE RECOMMENDATIONS

The Conference unanimously resolved that the following recommendations may be placed before Hon'ble the Administration Committee of the Peshawar High Court for consideration. These recommendations are based on feedback from participants expressed in plenary sessions and supported by members of the District Judiciary during consultative process.

1. An independent and professionalized Secretariat may be established at Peshawar High Court for District Judiciary as per proposed organogram. Each Wing may be headed by a Senior Judicial Officer with specialized support staff. The posting at the Secretariat may be tenure based.
2. The head of the Secretariat may be called as Registrar or Secretary. The head of Secretariat may be made ex-officio member of the Administration Committee, only when it takes up any business pertaining to District Judiciary. The nomenclature of the proposed secretariat may be "District Judiciary Secretariat" or "Judicial Secretariat."
3. Only one point entry into service may be introduced. Recruitment may be made on merit based competitive process through KP Public Service Commission. In the alternative, recruitment as Additional Sessions Judge may be made through Public Service Commission and length of standing at the Bar may be enhanced.
4. The proposed PER form based on Comprehensive Efficiency Index may be introduced for all tiers of District Judiciary.
5. Time frame for initiation and completion of process of writing PER, communication of adverse entries and disposal of representations there against may be provided for in the Rules with consequence in case of default.

6. Quantitative assessment in PER may be made by Secretariat on the basis of data provided by the districts. Such assessment may be made on achievement of targets set out by each district itself as part of its annual work plan.
7. Judicial Officers may not be assessed qualitatively on their judicial aspect for the purpose of PER. Judicial assessment may be left to the appellate fora for ensuring independence. The Secretariat may, however, be tasked to assess Judicial Officers qualitatively to the extent of language, expression and lucidity. It may also consult and ask for report of the Inspection Judges for the purpose.
8. The allocation of 40 marks for graded trainings in the PER may be revisited and rationalized. The Academy may be asked to ensure assessment of graded trainings by third party.
9. The question as to whether 'Integrity' should remain an area of assessment in the PER? may be placed before Hon'ble the Administration Committee for decision in view of plenary discussion on the issue.
10. The PER of Additional Sessions Judges may be initiated and reported upon by the District and Sessions Judges.
11. Officer reported upon may be awarded full marks in an assessment area/sub-area unless there is some data suggesting otherwise.
12. The transfer/posting policy based on Zone groups A, B and C proposed in the questionnaire for feedback from District Judiciary is unanimously recommended for implementation. Tenure in group A may be fixed as Two years while One year in each group B and C.
13. The cases of transfer/ posting on medical or any other compassionate ground may be disposed of by the competent authority in its own discretion. Mutually agreed transfers of Judicial Officers may also be allowed.
14. The sentiments of District Judiciary reflected in answers to questions No. 43 to 49 may be taken into account during the process of elevation to the High Court.
15. Compulsory health insurance of Judicial Officers and issuance of health card may be pursued with the Provincial Government.

16. Process for award of selection grade to the senior most 33% officers in each tier as provided for under the service Rules may be initiated. A career path in terms of length of service may be fixed for each tier of Judicial Officers.
17. The scheme of provision of car on depreciated value to retiring Judicial Officers may be introduced.
18. A welfare fund for families of deceased Officers may be established. The welfare wing may also carve out some post-retirement benefit schemes.
19. A research wing may be established in each district for continued research for guidance of the Judicial Officers on legal issues. It may also be tasked to maintain statistics and to carry out research on trends of litigation in the district.
20. The possibility of increase in the posts of Senior Civil Judges or creation or re-designation as Assistant Sessions Judges within the allocated budget may be looked into.
21. The proposed reform initiatives may be embodied in the service Rules and if need be process for enactment of Judicature Act may be initiated.
22. The districts may be allowed to regulate their working days and working hours in accordance with their annual work plan.

## **8. ANNEXTURES**

### **8.1 CONCEPT NOTE**

Hon'ble the Chief Justice has mandated a team of Judicial Officers to work on certain reforms for improvement in the service delivery of the District Judiciary. For ensuring such improvements, specific areas were identified for consideration. Those areas are: first, establishment of a Secretariat for District Judiciary (SDJ); second, re-designing the PER policy/form; and, third, proposing relevant amendments in the law. Till date, the team has been able to prepare a draft for the establishment of the SDJ, propose a new PER policy/form and suggest relevant amendments in the NWFP Judicial Service Rules, 2001 (substituted).

In order to obtain feedback on the work in these areas, initially, an informal preliminary Focus Group Discussion was arranged in the KP Judicial Academy on 21 and 23 February 2017, which was followed by sending of relevant documents to the Districts for deliberations (vide letter #6996-7041/Admn., dated 15 April 2017)). Later on, informal meetings were scheduled with colleagues in various regions; out of which Kohat and Swat have been visited; a consultation with selected Judicial Officers from central districts has been done in the KP Judicial Academy; and another at Abbottabad is being considered. On the direction of the HCJ, a separate revised proposal regarding recruitment is also being sent to all Judicial Officers for their input, along with this letter. Finally, a conference is now being convened for the purpose. The conference is proposed to be held at Green Hotel, Nathiagali, on 14-16 July 2017. The check-in time at the Hotel is post 2:00 pm.

Please be informed that no meaningful and outcome-based deliberation at the conference would be possible without an in-depth and critical reading of the following relevant documents attached herewith:

- a) Concept document of the Secretariat (vetted by an international expert)
- b) PER form and efficiency index available in the proposed amended Rules as a schedule
- c) Proposed amendments in the existing 2001 Rules

- d) Proposed amended Rules entailing separation from civil service, reflecting on change in the nature of service (These documents are also available on [www.peshawarhighcourt.gov.pk](http://www.peshawarhighcourt.gov.pk) and [www.kpia.edu.pk](http://www.kpia.edu.pk)).

The learned District and Sessions Judges of the Districts are requested to deliberate upon the above mentioned documents and discuss the relevant issues with all Judicial Officers of their respective districts. Because the District and Sessions Judge is to participate and express the point of view of all the Judicial Officers of the district, thus no one shall be left unrepresented at the conference.

The conference is the culminating point for the reforms, which are of great significance and far reaching consequences for our judicial service. For this purpose, we strongly recommend to please read the above mentioned documents and other relevant material, such as, the Constitution, the Judicial EstaCod, 2011 and relevant service laws, including case law, etc., for critical and result-orient discussion.

If you have any query please don't hesitate to contact us during working hours (email/phone: [Masood@kpia.edu.pk](mailto:Masood@kpia.edu.pk) /091-9213088, [Kiqbal@kpia.edu.pk](mailto:Kiqbal@kpia.edu.pk) /091-9211285, and [anees.bukhari@gmail.com](mailto:anees.bukhari@gmail.com) /091-9213183).



## 8.2 QUESTIONAIR FOR FEEDBACK FROM DISTRICT JUDICIARY

1	2	3	4
S#	Query	Yes	No
1.	Is Secretariat of District Judiciary (SDJ) required?		
2.	The Head of DJS may be called Secretary?		
3.	If required, should SDJ be staffed by the Judicial Officers (JOs)?		
4.	Should there be criteria for selection of JOs for appointment to Secretariat?		
5.	Should the SDJ posting be tenure-based?		
6.			
7.	Should there be a separate SDJ cadre amongst JOs?		
8.	Would it be appropriate to select permanent separate JOs through competitive process from amongst Civil Judge/Senior Civil Judges for SDJ with upward progression to BS-21/22?		
9.	Should the staff of SDJ (though progressively) be recruited through Public Service Commission?		
10.	Do you agree with the proposed wing-wise structure of the SDJ?		
11.	Should there be separate wing/section each for CJs, SCJs, AD&SJs and D&SJs?		
12.	Should SDJ be empowered to collect information directly from Districts for Monitoring & Evaluation? (Explanation: power-sharing/relationship between District & SDJ)		
13.	Should SDJ assess judgment of JOs (in terms of expression only)?		
14.	Alternatively to the above (Q12), should there be a graded annual judgment writing training?		
15.	Should the Head of the SDJ be declared as ex-officio member of the Administration Committee?		
16.	Do you agree with the objectives of SDJ mentioned in the draft function review note		
17.	Should the proposed HR & Welfare wing also carve out some post-retirement benefit and activities plan?		
18.	Should there be a Judicial Officers' Fund for the families of deceased JOs (Shoaib Khan Custom Juge)		
19.	Should there be one PER form for all categories of JOs?		
20.	Should 'integrity' be included in the PER for reporting officer?		
21.	Should each District chalk out its own disposal plan as a replacement of DPEP? (District Abbottabad has proposed one such policy)		
22.	Should DSJ write PER of ADJ?		
23.	Should PER contain a column on ideology of Pakistan?		
24.	Should there be retrenchment on performance basis? (MianAdghar Shah)		

25.	Should ADJ be given role to report about Judgment of SCJ and CJ, in context of PER (Chitral)		
26.	Should JOs be dismissed who earns three successive adverse PERs? (MianAsghar Shah)		
27.	Should the rules be amended to include retirement after 10 yrs. Service with full benefits? (Proposal: Nowshera)		
28.	Salary of CJs be equivalent to 35% of a Judge of High Court (Proposal: Nowshera)		
29.	Should a career path in terms of length of service be fixed ? (time scale promotion)		
30.	Promotion should be performance-based amongst top three senior JOs (proposal: Nowshera)		
31.	Civil and Criminal work should be bifurcated at all levels (proposal: Nowshera)		
32.	Should the financial affairs of the JOs be centrally maintained at SDJ (proposal: Sawabi)		
33.	Is the nomenclature "District Judiciary" appropriate		
34.	Training Marks may be awarded by third party		
35.	Should there be merit quota policy for promotion, among the JOs, through PSC		
36.	Should SDJ prepare an annual report for fitness of field posting(s) of JOs?		
37.	Should existing recruitment system of AD&SJ remain in force but with selection through Public Service Commission? (MianAsghar Shah)		
38.	Should AD&SJ quota may be re-casted as 75 and 25 % for promotion and direct recruitment, respectively? (MianAsghar Shah)		
39.	Should there be tenure posting? (MianAsghar Shah)		
40.	Should JOs be compulsorily retired if left out from promotion for three consecutive times? (MianAsghar Shah)		
41.	Should AD&SJs be selected through Commission/NTS competitive exam with opportunity to CJs/SCJs of 5 yrs experience to sit in exam? (Shoaib Khan, Custom Judge)		
42.	Should there be a new Judicial Service Tribunal comprising of retired Sessions Judges? (Shoaib Khan Custom Judge/Nowshera)		
43.	Should there be an open publically known competitive process for elevation to the High Court among the lawyers and Judges?		
44.	Should the elevation be two-step in the first the eligible pool to be ascertained followed by competitive process?		
45.	Should the eligible pool be publicized for inviting any opinion, criticism or disqualification, at least, 06 months prior to the declaration of a final eligible pool?		
46.	Should there be an independent, but diverse quality assurance mechanism at different stages of the open competitive process of selection?		
47.	Should there be fixed quota for bar and bench in		

	elevation?		
48.	Should on each position for judges, 2 names may be proposed for elevation? (MianAsghar Shah)		
49.	Should a seat meant for JOs should be filled by considering the JOs down to the level of availability of a suitable candidate?		
50.	Should induction training be not less than 6 months?		
51.	Should there be more trainings of CJs during the first 5 years of service?		
52.	Should there be attachment with police station, revenue office, district administration and army during induction training?		
53.	Do you agree with the existing transfer/posting policy?		
54.	Should a transfer/posting policy be devised on the basis of distance from JOs home town? (DI Khan)		
55.	Zonal-wise transfer should exempt female judges (proposal: Nowshera) Should a transfer policy (and others, e.g., training abroad) be gender-sensitive?		
56.	Should JOs be given category A,B and C posting one after the other? (Referred to the table below)		
57.	Should tenure in a category be determined by the requirement of number of JOs within that category? (Explanation: the number of JOs, on the one hand; and the number of required JOs within a category, on the other, will affect the duration of tenure. Illustration: The total No. of DSJs is 80. In category A 40 DSJs are required. Then, the tenure mentioned in the table will apply. The benefits are that 1) each DSJ will spend equal time in each category, 2) A DSJ will have a choice to go to either zone within a category for next posting.		
58.	Should JOs whose fitness have been determined will be posted alternatively in ex-cadre in field; Tenure in ex-cadre in field again is to be determined by the requirement of JOs?		
59.	Should a posting in an Area be fashioned in such a manner that JOs are assigned the zone more convenient to him?		